

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BRENDA SZALANSKI, on behalf of herself,
individually, and on behalf of all others
similarly situated,

Plaintiff,

v.

MIKE ARNOLD, LEA GEREND, PHIL
TROIA, MIKE WHALEY and
GREATBANC TRUST COMPANY,

Defendants, and

PDQ FOOD STORES, INC. EMPLOYEE
STOCK OWNERSHIP PLAN,

Nominal Defendant.

Case No.: 19-cv-940-wmc

**DEFENDANT GREATBANC TRUST COMPANY'S
MOTION TO DISMISS AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant GreatBanc Trust Company (“GreatBanc”) moves to dismiss Plaintiff's Amended Complaint (the “Motion”).

The Amended Complaint alleges that GreatBanc violated ERISA because it followed the ESOP participants' direction and voted the shares of the PDQ ESOP in favor of PDQ's October 2017 asset sale to Kwik Trip, Inc. (“Kwik Trip”) (the “Transaction”), despite three so-called “side payments” to the Individual Defendants. Specifically, Plaintiff brings claims against GreatBanc under ERISA section 406(a)(1)(D) (Count I) and ERISA section 404(a)(1) (Count III) based on the following:

- 1) PDQ's payment of \$4.96 million to the Individual Defendants owed under a Stock Appreciation Rights Plan (the “SARs Plan”) and Grant Agreements that were established and unchanged since 2009—eight years before the Transaction (the “2009 SARS Plan Payment”).
- 2) an enhancement to the Transaction price that provided an additional payment from Kwik Trip of up to \$1.85 million to PDQ (and the ESOP) and up to \$1.85 million

to the Individual Defendants if the Individual Defendants successfully negotiated long-term leases or purchases of select properties on behalf of Kwik Trip after the Transaction (the “Lease Incentive”).

- 3) severance payments to approximately thirty management-level PDQ employees, who were not expected to be retained by Kwik Trip (the “Severance Payments”).

The Amended Complaint fails to state any claim against GreatBanc based on the fact the Transaction included these three deal points. As fully set forth in GreatBanc’s accompanying Memorandum in Support, the Amended Complaint fails to plausibly allege that GreatBanc violated ERISA section 406 (Count I) or ERISA section 404 (Count III). Accordingly, the Court should dismiss the Amended Complaint with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 6, 2023, I caused true and correct copies of the foregoing to be filed electronically using the Court's CM/ECF system and to thereby be served upon all registered participants identified in the Notice of Electronic Filing in this matter on this date. This document is available for viewing and downloading on the CM/ECF system.

/s/ Michael L. Scheier
Michael L. Scheier